

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE	:	
	:	Cr.A. No. 05-11-1879 through
Plaintiff,	:	05-11-1881
v.	:	
	:	Case No. 0511017233
GREGORY MCDONNELL	:	
	:	
Defendant.	:	

Decision after trial

Date of Trial: March 16, 2006

Date Decided: March 23, 2006

Stephen Smith, Deputy Attorney General, Department of Justice, 102 West Water Street, Dover, Delaware 19901, Attorney for the Plaintiff.

Jeffrey K. Bartels, Esquire, 410 South Maryland Avenue, Wilmington, Delaware 19804, Attorney for Defendant.

Trader, J.

The defendant is charged by information of the Attorney General that he failed to remain stopped at a stop sign in violation of 21 Del.C. Sec. 4164(b), failed to report an accident resulting in injury in violation of 21 Del.C. Sec. 4203(a)(1), and left the scene of an accident resulting in injury in violation of 21 Del.C. Sec. 4202(a). Trial by Court was held on March 16, 2006 and I reserved decision.

The relevant facts are as follows: On November 17, 2005, at approximately 9:45 p.m., Norleen Furroughs was operating a 2001 Ford Mustang in a southerly direction on U.S. Route 13 near Farmington, Kent County, Delaware. At the same time and place, a white Ford Explorer driven by the defendant, Gregory McDonnell, proceeded from the stop sign at the intersection of Woodyard Road and U.S. Route 13 southbound, and was struck in the left rear bumper by the left front end of the Ford Mustang. The collision occurred in the left lane of southbound Route 13 about four feet from the east edge of the roadway. The defendant stopped his vehicle in the median strip, but Ms. Furroughs could not start her vehicle and it remained in the left lane of the highway. Ms. Furroughs stepped out of her vehicle and turned around to grab her purse. She saw headlights and was then struck by a 1996 Cavalier driven by Jessica Warrington. Although there is a variation in the estimates of time between the two impacts, I conclude that between one and two minutes elapsed between the impact of the Mustang and white truck, and the Cavalier hitting the victim. As a result of the second impact, Ms. Furroughs was flown to Christiana Hospital suffering from serious physical injuries resulting in both of her legs being amputated below the knees.

The defendant left the scene of the accident without providing his name, address, registration number, and driver's license to the person that was injured. Additionally, the

defendant did not report the accident to the nearest police agency with jurisdiction. The defendant was stopped by the police officer several hours later and he told Trooper Killen that he left the scene because he was scared.

As to the charge of failing to remain stopped at a stop sign in violation of 21 Del.C. Sec. 4203(a)(1), it is necessary for the state to prove two elements of the offense beyond a reasonable doubt: (1) the defendant was driving a motor vehicle on a public highway and had stopped at a stop sign, and (2) he failed to remain stopped and yield the right-of-way to a vehicle approaching so closely as to constitute an immediate hazard. Ms. Furroughs testified that she was driving southbound in the right lane of U.S. 13 when the Ford pulled in front of her from the stop sign. She further testified that she moved to the left lane and struck the vehicle on its left rear bumper. The defendant testified that he had crossed the highway and his vehicle was in the median strip, and that he could proceed no further because there was a vehicle in the median. When the defendant's vehicle was stopped, it was struck by Ms. Furroughs's vehicle. Ms. Furroughs's testimony is corroborated by the testimony of Kevin Tribbetts. Tribbetts testified that the Ford Explorer pulled directly into the path of the Ford Mustang. Haven Lo, a defense witness, testified that the white truck was moving at the time of the impact. I accept the state's testimony on this issue and reject the defendant's testimony. In so doing, I find the defendant guilty beyond a reasonable doubt of failing to stop at a stop sign.

The defendant is also charged with leaving the scene of a personal injury accident in violation of 21 Del. C. Sec. 4202(a). Section 4202(a) provides as follows:

- (a) The driver of any vehicle involved in an accident resulting in injury or death to any person shall immediately stop such vehicle at the scene of such accident. The driver shall give the driver's name, address and the registration number of the driver's vehicle

and exhibit a driver's license or other documentation of driving privileges to the person struck or the driver or occupants of any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying of such person to a hospital or physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person, or by contacting appropriate law enforcement or emergency personnel and awaiting their arrival.

To convict the defendant of this offense, it is necessary for the state to prove beyond a reasonable doubt the following elements of the offense: (1) the defendant was the driver of a vehicle involved in an accident, (2) resulting in injury to any person, (3) he did fail to immediately stop at the scene of such accident, and (4) he knew he was involved in an accident.

The state has alternative theories to establish the defendant's criminal liability under this section. The state's first theory is that Ms. Furroughs was injured in the first impact. Ms. Furroughs testified that her face and eye struck the steering wheel in the first impact and that she had a fractured eye socket and blurred vision. Furthermore, it is a reasonable inference that she was in substantial pain as a result of that impact. Physical injury is defined in 11 Del.C. Sec. 222(22) as impairment of physical condition or substantial pain. Although Ms. Furroughs received serious injuries when she was struck by the Warrington vehicle, she was in substantial pain as a result of the first impact. Since the State has established that the defendant was involved in an accident resulting in personal injury, that he left the scene of such accident knowingly, and that these elements were established beyond a reasonable doubt, I find the defendant guilty of leaving the scene of a personal injury accident.

Assuming arguendo that if the victim was not injured as a result of the first impact, the State contends that the defendant was still involved in an accident resulting in personal injury. The State's contention is correct.

This is a case of first impression in this state. The primary rule of statutory construction is to ascertain the intent of the legislature. *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982). If the statute is unambiguous the statute should be applied as written and judicial construction is not permitted. If the statutory language is ambiguous, the Court may go beyond the words to determine legislative intent.

In an accident, the word "involved" is not defined in 21 Del.C. Sec. 4202(a) and the courts of this state have not defined that term. To ascertain the meaning of the words in a statute, the court should consider the context and the setting thereof, as well as dictionary definitions of the words or expressions used therein. *Hutton v. Phillips*, 70 A.2d 15, 17 (Del. 1950). The relevant dictionary definitions of involved include "implicated" and "entangled in trouble". *Webster's New World Dictionary* (3rd ed., 1988).

I have also examined the cases in the Courts of other states. Many of these jurisdictions have looked to dictionary definitions of "involved" to determine the meaning of involved under statutes similar to Delaware's statute. Being involved in an accident is used in the sense of being connected with an accident in a natural or logical manner. *People v. Sell*, 96 Cal. App. 2d 521, 523(Cal.App. 1950). Involved in an accident means implicated in an accident or connected with the accident in a substantial manner. *People v. Kerger*, 548 N.E. 2d 36, 39 (Ill.App. 1989). A motorist is involved in an accident if the evidence demonstrates the motorist was implicated in or connected with

the accident in a logical or substantial manner. *People v. Oliver*, 617 N.W. 2d 721, 724 (Mich.App. 2000). The class of persons involved in an accident has not been limited to those persons driving vehicles that are physically involved. *State v. Petersen*, 522 P. 2d 912, 920 (Or.App. 1974). Leaving the scene statutes not only apply to those persons whose conduct was the proximate cause of the accident, but to those persons whose actions were a precipitating or contributing factor to the accident. *State v. Simpson*, 627 A.2d 346, 349 (Vt. 1993). Whether a defendant legally caused the accident is not dispositive of whether the defendant caused or was involved in an accident. *People v. Bammes*, 265 Cal. App. 2d 626, 631 (Cal.App. 1968).

Although there are no cases in other jurisdictions with identical facts, there are factual situations reasonably close to the case at bar. In *State v. Chen*, 884 P.2d 392 (Haw.App. 1994), criminal liability was imposed when the defendant's automobile struck a taxi and the taxi thereafter struck and killed a pedestrian. In *State v. Petersen, supra*, the defendant and another driver engaged in a street race and the other driver collided with a third vehicle. The defendant was guilty of violating the hit and run statute when he left the scene of the accident. In *People v. Bammes, supra*, the defendant was involved in an accident where the defendant's vehicle turned into the path of a station wagon, and the station wagon swerved and collided with a third vehicle. In *People v. Oliver, supra*, a driver who was pushing a non-running second vehicle piloted by a second driver was involved in an accident when the second vehicle veered into traffic resulting in a fatal collision. In *State v. Simpson, supra*, the decedent was killed when he lost control of his vehicle and struck a telephone pole while attempting to avoid a collision with the defendant who had pulled out of side road on to the highway without

stopping. In *People v. Kerger, supra*, the defendant was involved in an accident when she swerved to miss a pedestrian who was then struck by a vehicle following directly behind the defendant.

Thus, applying the interpretation of the term “involved in an accident” in accordance with the dictionary definitions and the above case law, I conclude that “involved in an accident” means being connected with an accident in a natural or logical manner or implicated or entangled with the final event. Although the defendant may not have been the proximate cause of the injuries received by the victim from the impact with the Cavalier, his conduct precipitated the final unexpected event. The defendant was involved with an accident with the victim that left her car disabled in the left hand lane of U.S. Route 13. Shortly thereafter, she was struck by another car and seriously injured. The defendant admitted that he observed the impact and was aware of her injury. Thus, the defendant was implicated or entangled or closely connected with the final event. Therefore, I conclude the State has established beyond a reasonable doubt that he was involved in an accident resulting in personal injury, left the scene of such accident, and was knowingly involved in such accident.

The purpose of the statute is to protect those injured and facilitate determination of civil and criminal liability. A broad interpretation of the term “involved” makes sense in the light of the purposes of the hit and run statute: to prohibit drivers from seeking to evade criminal and civil liabilities by escaping before their identity can be established, and from leaving persons injured, abandoned and destitute of first aid or medical care. Therefore, it is incumbent upon the defendant to identify himself at the scene, furnish his license, registration, and insurance information, and furnish assistance to victims in order

to minimize their injuries. The evidence has clearly established beyond a reasonable doubt that the defendant performed none of the requirements of the code.

As to the charge of failure to report an accident resulting in injury in violation of 21 Del.C. Sec. 4203(a)(1), in order to convict the defendant of this offense it is necessary to show beyond a reasonable doubt that (1) the defendant was involved in an accident resulting in injury, and (2) he did fail to report such accident immediately to the nearest police agency with jurisdiction. The evidence previously recited establishes beyond a reasonable doubt that the defendant was involved in an accident resulting in injury, and it also establishes beyond a reasonable doubt that he failed to report said accident immediately to the nearest police agency with jurisdiction. Therefore, I find the defendant guilty of failing to report an accident.

In summary, the Court finds the defendant guilty of failing to stop at a stop sign, guilty of failing to stop at the scene of a personal injury accident, and guilty of failing to report an accident. A presentence investigation is ordered and sentencing is scheduled for Friday, April 28, 2006 at 9:00 a.m.

IT IS SO ORDERED.

Merrill C. Trader
Judge